Development of PPPs in the Kyrgyz Republic

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Agenda

- PPP-friendly environment
- PPP law
- PPPs in practice
- Long-term maintenance PPPs for roads
PPP-Friendly Environment

- Key importance to establish an enabling environment
- Simple and general PPP law with guidelines in decrees
- Some main aspects:
  - Definition of concepts and terms
  - Transparent and competitive bidding
  - Allowing for bid evaluation on a net present value (NPV) basis
  - Provision for international arbitration
  - Concept of contract renegotiation and amendments
  - Allowing public disclosure of concession agreements
  - No differentiation in treatment for national and foreign investors
PPP-Friendly Environment

- SWOT analysis carried out under the TRACECA project on the Coordination of National Transport Policies for the Central Asian Republics in 2007.
- Concession Law exists since 1992 and was amended in 2004.
- EBRD evaluates a “low compliance” level (problems identified in the scope of application, list of objects subject to concessions, selection procedures, negotiation flexibility, security).
PPP-Friendly Environment

Level of compliance in core areas of concession legislation

Note: The extremity of each axis represents an ideal score

Source: EBRD Concessions Legislation Assessment Project, 2007/8
PPP-Friendly Environment

Opportunities:

• Important transport investment opportunities especially in roads construction and maintenance, but also airports.
• Expectations of efficiency gains from improved transport administration.
• Diminution of intra-regional and inter-regional development disparities.
• Increasing interregional and international traffic.
PPP-Friendly Environment

**Threats:**
- Traffic development restrictions because of closed borders or border restrictions due to political or security reasons
- Development of transport corridors ignoring / bypassing Kyrgyz Rep due to prohibitive non-physical barriers of trade and transport.
- Problems of good governance.
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PPP law

- Law on PPPs passed on 11 May 2009 № 154
- Decree № 323 on 27 May 2009 “On approving the procedures ...”
- Asian Development Bank has considered the adoption of these regulatory legal acts as contradictory to generally accepted international PPPs practice.
- On 9-11 October 2008 Expert Working group on PPPs met in Samarkand under project for Coordination of National Transport Policies of the Central Asian Republics and agreed a model PPP law.
PPP Law

- Kyrgyz law covers only 5 of the generally accepted 27 points needed in a PPP law.
- Kyrgyz law covers: objectives, principles, transparency, private partner’s guarantees, dispute settlement..
- But does NOT cover 22 other issues...
PPP Law does not cover...

- Definitions
- Equal treatment and non-discrimination,
- Rateability principle,
- Balance of risks,
- Free competition,
- Freedom of contracts, Cooperation, Government powers, Competence on economic planning, on budget execution, of specialist organization on PPP issues, of local governments,
- National Council on PPPs,
- Subject matter of the PPP,
- Basic contractual forms of PPP
- PPP contract realization methods,
- Ownership of intellectual property,
- Control over realization of PPP,

- Private and state partners’ responsibilities,
- Access to information,
- PPP initiation process,
- Information message on PPP,
- Private partner selection commission,
- Requirements of the offers,
- Evaluation of the offers,
- Making the PPP contract,
- Termination of the PPP,
- State register of PPP contracts,
- State partner’s guarantees,
- Risk and risk allocation,
These issues need to be addressed.

We propose consideration of the model law already agreed by Kyrgyz and other experts from Central Asian Republics.

UNECE Team of Specialists is ready to help.
Other laws

• A concession law needs to be compatible with other legal texts:
  • Procurement law(s) - allow for competitive bidding
  • Dispute resolution law – international arbitration?
  • Expropriation law – provisions for compensation?
  • Foreign ownership legislation - foreign ownership restrictions on land or land rights, foreign equity limitations to domestic companies?
  • Labour law
  • Foreign exchange law
  • Tax system

• Additionally consistent and objective judicial enforcement
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PPPs in practice in Kyrgyz Republic

Potential projects include:
- the construction of small and medium-sized hydroelectric power stations,
- rehabilitation of existing thermoelectric plant,
- construction and maintenance of toll roads,
- Long term maintenance of major roads.
Why do PPPs?

- PPPs are an option for public authorities that want to change focus from provision of infrastructure to provision of service.
- PPPs are not just about finance - private sector commitment to maintenance and quality.
- Road sector performance can be improved by adopting a life cycle approach.
Concurrent engineering = significant time savings

Example: A28 Rouen-Alençon motorway – 128 km in 4 years
Improved quality of service
How to do PPPs

- PPPs demand a relationship of trust & risk sharing.
- A strong need for major preparations and reforms of the public sector to create an “enabling environment”
- Stable political environment and good governance principles
- Healthy economic and financial environment
- General policy framework for private sector participation and commitment to policy stability
PPPs - the basics

- A clear policy statement needed to denote high political commitment (binding statement) for the need to attract private funds in the transport sector.

- General legal framework
  - The legal framework needs to be clear, consistent and not conflicting, stable and fair
  - Usually it consists of:
    - the concession law
    - complementary decrees and
    - other associated laws
Know-how needed

- PPP implementation requires highly specialised, multi-disciplinary knowhow (legal, technical, financial, economic) in the public sector, mainly focusing on:
  - PPP policy development and PPP concept promotion
  - facilitating government coordination
  - environmental assessment
  - contract negotiations, management and supervision (specialised legal knowhow)
PPP Unit

- Must set up and operate a PPP unit
- Focused, dedicated and experienced team helping to organise pre-tender stage:
  - From concept to PPP management
  - Expertise and oversight
  - Professional and politically independent
  - Trained specifically in PPP procurement procedures
  - Use consultants to fill in missing skills and capabilities
- Good governance – ensures open and fair
Private sector capacity building

- Local private transport actors should be assessed since some of them might be potential investors and they facilitate the PPP process
- In particular, the following should be assessed:
  - Consulting firms for technical design, demand analysis, supervision
  - Contractors for construction and maintenance
  - Financial markets (banking system, capital markets)
  - Potential operators (e.g., for toll roads as well as "free" roads)
  - Insurance companies
  - Potential investors
Agenda

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Long-term maintenance PPPs

Example: Rajasthan Mega-Highways project

Before

After
Rajasthan Mega Highways Project

- Upgrading of 1,053 km of key state roads to two lane carriageway with paved shoulder
- Identified roads to complement National Highway stretches and provide better connectivity in north-south direction
Project Philosophy

- Single largest road project under PPP framework in India
- Clubbing of different road corridors in a single project enables cross-subsidisation of marginally/un-viable corridors
- Project structure provides focused attention to project development and implementation
Advantages of Megahighways model

- Unbundling of risks (construction, maintenance, traffic/revenue and financing risks at different stages and appropriate times)
  - With BOT all risks are clubbed -> increase in bid prices
- Returnable up-front capital support
  - In BOT models, up-front capital grant not returnable by operator, even if project does very well
- Project surpluses to be reinvested in Project Roads/State Roads since returns on equity are capped
  - In BOT models, surpluses are retained by BOT operator
Conclusions

1. What is needed is a systematic approach with the highest political support essential
2. PPPs are not just about money, but about quality and value
3. PPPs do not have to mean tolling – eg long-term maintenance PPPs
4. UNECE Team of Specialist ready to help the Kyrgyz Republic.
Thank you for your attention

Благодарю вас за ваше внимание

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